

STATE OF MICHIGAN
COURT OF APPEALS

REDFORD HOUSE CONDOMINIUM
ASSOCIATION,

UNPUBLISHED
October 23, 2003

Plaintiff-Appellant,

v

JERALD MYSZA and NADIA MYSZA,

No. 240029
Wayne Circuit Court
LC No. 00-026341-CH

Defendants-Appellees.

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order awarding plaintiff attorney fees in the amount of \$25. We reverse and remand.

In March 1997, defendants, and their two cats, moved into a unit in the Redford House Condominiums. After several complaints from co-owners in the condominiums regarding the cats, plaintiff informed defendants, by way of two separate letters dated May and June of 2000, that they were in violation of Article VI, § 6 of the Amended Condominium Bylaws, which limits co-owners to keeping one cat in each unit. Plaintiff further instructed defendants to remove one of the cats from their unit, and informed defendants that if they failed to comply, plaintiff would take legal action and defendants could be liable for the costs and attorney fees incurred. Defendants failed to comply, and plaintiff thereafter filed suit seeking equitable relief to enjoin defendants from (a) keeping more than one cat in their condominium unit, (b) permitting any cat to run loose upon any common area of the condominium project, and (c) permitting any cat to defecate or urinate upon any common area of the condominium project, and from otherwise violating the "Condominium Documents." On July 10, 2001, defendants agreed to the entry of a consent judgment and permanent injunction for the equitable relief that plaintiff had been seeking. Plaintiff thereafter filed a motion for attorney fees and costs under the Condominium Act,¹ seeking an award of \$4,979.31. The trial court awarded plaintiff \$25 in attorney fees and costs.

¹ MCL 559.101, *et seq.*

On appeal, plaintiff contends that the trial court abused its discretion by awarding plaintiff only \$25 in attorney fees. We agree. A trial court's decision whether to award attorney fees and the determination of the reasonableness of the fees are within the trial court's discretion and will be reviewed by this Court for an abuse of discretion. *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471 (1995). An abuse of discretion exists if an unprejudiced person, considering the facts upon which the trial court acted, would say there is no justification or excuse for the ruling, or if the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias. *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1998); *Cleary v Turning Point*, 203 Mich App 208, 210-211; 512 NW2d 9 (1993).

Generally, in Michigan, an award of attorney fees as an element of costs or damages is prohibited absent express authorization by statute or court rule. *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). Section 106 of the Condominium Act provides: "[I]n a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide." MCL 559.206(b). Thus, attorney fees are allowed to the extent that the condominium documents provide for them. Article XI, § 1 of the Condominium Bylaws provides, in pertinent part, as follows:

Section 1. Any default by a Co-owner shall entitle the Association...to the following relief:

(a) Failure to comply with any of the terms or provisions of the Condominium Documents or Act No. 59 of the Michigan Public Acts of 1978, as amended, or with any of the rules and regulations promulgated by the board of Directors of the Association hereunder shall be grounds for relief, which may include without intending to limit the same, an action to recover sums due for damages, injunctive relief...or any combination thereof, and such relief may be sought by the Association....

(b) If any proceeding arising because of an alleged default by any Co-owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees, (not limited to statutory fees) as may be determined by the Court, but in no event shall any Co-owner be entitled to recover such attorney's fees.

Accordingly, pursuant to statute and the condominium bylaws, plaintiff is entitled to reasonable attorney fees.

The burden of proof as to reasonableness rests on the party claiming compensation. See *In re Condemnation of Private Property for Highway Purposes (Dep't of Transportation v D & T Const Co)*, 209 Mich App 336, 340-341; 530 NW2d 183 (1995). There is no precise formula for assessing the reasonableness of an attorney fee, but factors that should be considered include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer, (3)

the fee customarily charged in the locality for similar legal services, (4) the amount involved and the results obtained, (5) the time limitations imposed by the client or by the circumstances, (6) the nature and length of the professional relationship with the client, (7) the experience, reputation, and ability of the lawyer or lawyers performing the services, and (8) whether the fee is fixed or contingent. MRPC 1.5(a); *In re Condemnation, supra*.

In rendering its decision in this case, the trial court stated:

“I think the appropriate amount of attorney fees in this case is \$25. You can present an order that says that. Thank you.”

The record does not indicate any rationale by the trial court for its award to plaintiff of \$25 for attorney fees and costs, nor does the record indicate that the court considered the factors listed under MRPC 1.5(a). Plaintiff provided the court with a complete itemization of attorney fees and costs, which amounted to \$4,979.31. The court, however, did not express any concern about the hourly rates charged or time spent. Instead, it appears to this Court that the trial court focused on the low value of the case, i.e., removing a cat from a condominium unit.

We find that the trial court abused its discretion in awarding plaintiff \$25 in attorney fees. *Cleary, supra*. In rendering its award, the trial court precluded any debate on the specifics of plaintiff’s attorney fee and cost request. Accordingly, we remand this case to the learned trial judge to determine, after proper review, the amount of attorney fees and costs to award to plaintiff.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper